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Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

ALICE CLISSURAS and
PATRICIA CLISSURAS,

Plaintiffs-Appellants and
Petitioners,

v.

CITY UNIVERSITY OF NEW YORK,
TEACHERS' RETIREMENT SYSTEM OF
THE CITY OF NEW YORK,
PROFESSIONAL STAFF CONGRESS/CITY
UNIVERSITY OF NEW YORK,
PSC-CUNY WELFARE FUND:

ALL CAUSALLY RESPONSIBLE INDIVIDUALS
OF AFORESAID FOUR AGENCIES;
ALL POTENTIALLY RESPONSIBLE AGENCIES; and
ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF
SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants-Appellees and
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT COURT OF APPEALS

APPENDIX IN SUPPORT OF APPELLANTS' PETITION FOR WRIT OF CERTIORARI

ALICE CLISSURAS, pro se
Lead Petitioner
Patricia Clissuras, pro se
Plaintiffs-Appellants and
Petitioners
215 Adams Street
Brooklyn, NY 11201
(718)875-6171

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

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CLISSURAS v. CUNY, et al.

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APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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COURT OF APPEALS DOCKET:

1/9/2004	Appellent Alice Clissuras in 03-7531 motion for additional time for oral argument FILED (w/pfs).(2516706-1)
1/13/2004	Order FILED DENYING motion for oral argument by endorsed on motion dated 1/9/2004
1/14/2004	Notice to counsel in re: Order dated 1/13/2004
1/27/2004	Case heard before KEARSE, CALABRESI, KATZMANN, C.JJ CD DATE: 1/27/2004
1/29/2004	Affirmation from APPELLANT Alice Clissuras received.
2/3/2004	Letter dated 2/3/04 from appellee's counsel regarding changes to the summary order received.
2/3/2004	Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion filed. (GC)
2/3/2004	Judgment of the district court is by published unsigned PER CURIAM opinion filed.
2/3/2004	Judgment filed.
2/3/2004	Notice to counsel in re: OPINION and SUMMARY ORDER filed 2/3/2004
2/9/2004	Letter received from Alice Clissuras requesting tape of oral argument Fee Paid Forward to Calendar Receipt #171561
2/18/2004	Note The OPINION PRICE is $1.40

2/20/2004	Appellants Alice Clissuras and Patricia Clissuras Petition for rehearing / rehearing en banc, filed with proof of service.
3/16/2004	Notice to counsel re: Motion Order filed on 3/10/04.
5/14/2004	Order FILED DENYING motion petition for rehearing and for rehearing en banc by Appellants Patricia Clissuras and Alice Clissuras, endorsed, on motion dated 2/20/04 (AH)
5/19/2004	Notice to counsel re: Order filed on 05-14-04.
6/14/2004	Judgment MANDATE ISSUED CLOSED
6/14/2004	Notice to counsel re: Mandate Issued.
6/14/2004	Acco received in records room.

(Last entry as of 7/26/04)

(Please note: The above entries are relevant to the Orders for review and were taken out of the context of the July 26, 2004 docket.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

PRESENT: HON. AMALYA L. KEARSE,
HON. GUIDO CALABRESI
HON. ROBERT A. KATZMANN

Circuit Judges.

ALICE CLISSURAS and PATRICIA CLISSURAS,

Plaintiffs-Appellants,

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CUNY, PSC-CUNY WELFARE FUND,

Defendants-Appellees,

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID

Nos. 03-7531(L)
03-7532(CON)
(Filed Feb 3, 2004)

POTENTIALLY RESPONSIBLE AGENCIES,

Defendants.

For Plaintiffs-Appellants:

ALICE CLISSURAS, pro se, Brooklyn, NY
Patricia Clissuras, pro se, Brooklyn, NY, submitted a brief.

For Defendants-Appellees:

OREN ZEVE, Deputy Solicitor General, for Eliot Spitzer, Attorney General for the State of New York (Michael S. Belohlavek and Jean Lin, Assistant Solicitors General, on the brief), for City University of New York;

BARRY I. LEVY, Shapiro. Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP, New York, NY, for Professional Staff Congress-CUNY

NEIL D. LIPTON. Spivak, Lipton, Watanabe, Spivak & Moss, LLP, New York, NY, for PSC-CUNY Welfare Fund.

NORMAN CORENTHAL, Corporation Counsel of the City of New York, New York, NY (Michael A. Cardozo and Kristin M. Helmers, on the brief), for the Teachers' Retirement System of the City of New York.

Appeal from the United States District Court for the Southern District of New York (Scheindlin, J.)

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

In October 2002, plaintiffs-appellants Alice Clissuras and Patricia Clissuras filed separate pro se actions, in the United States District Court for the Southern District of New York against the City University of New York ("CUNY"), the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress-CUNY ("the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Their virtually identical complaints alleged numerous constitutional violations, ostensibly pursuant to 42 U.S.C.§1983 and §1985, and a variety of state law claims. The gravamen of the plaintiffs' action is that, following the respective retirements of Alice Clissuras in 1982 and Patricia Clissuras in 1986 from the faculty of New York City College of Technology, a CUNY senior college, they were denied certain pension and health benefits because of improper calculations and misclassifications by the defendants.

The district court (Scheindlin,J.) dismissed the claims against defendant CUNY at the outset of the litigation on the ground that CUNY was an "arm of the state" and consequently entitled to Eleventh Amendment immunity. We take up the issue of sovereign immunity in a separate per curiam opinion. The court below also dismissed the actions against the remaining named defendants pursuant to Fed.R.Civ.P.12(b)(6) and enjoined plaintiffs from instituting any future federal litigation against CUNY and these defendants without seeking leave of the court. In this order, we affirm the dismissal-pertinent to TRS, the Union, and the Fund-and the injunction.

Plaintiffs' claims of wrongdoing stem from events the latest of which occurred at least a decade before they filed their present suit, in October 2002. The statute of limitations for causes of action brought pursuant to §§1983 and 1985 in New York is three years, see Jaghory v. N.Y. State Dep't of Educ., 131F. 3d 326,331(2d Cir.1997), and a claim accrues "when the plaintiff knows or has reason to know of the injury which is the basis of (her) action. "Pearl v. City of Long Beach, 296 F.3d 76,80(2d Cir.2002) (internal quotation marks omitted). The record reflects that both plaintiffs had reason to know of their alleged injuries more than ten years ago. And, on the facts of their cases, the plaintiffs cannot point to any continuing violation that would preserve their claim. See Florida v. Long, 487 U.S. 223,239(1988) ("It is not correct to consider payments of benefits based on a retirement that has already occurred as a sort of continuing violation."). Because plaintiffs' constitutional claims are time-barred, they were properly dismissed.

In the absence of any viable federal claims,[1] the district court was well within its discretion in declining to

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[1]In their cavalcade of claims, plaintiffs make creative arguments regarding obstruction of justice and theft of identity. These claims are either time-barred or do not constitute private federal causes of action, or both. The only other potentially colorable federal claim asserted in plaintiffs' complaints is a violation of the Employment Retirement Income Security Act

(Continued on the following page.)

exercise supplemental jurisdiction over plaintiffs' state law causes of action, which is dismissed, of course, without prejudice. See 28U.S.C.§1367(c)(3) (2000); Ametex Fabrics, Inc. v. Just In Materials, Inc.,104F.3d 101.105(2d Cir. 1998). And having reviewed the history of this case, we find no abuse in the lower court's decision enjoining plaintiffs from filing federal lawsuit against these defendants without obtaining the court's permission. See Covanta Onondaga Ltg. P'ship v. Onondaga County Res. Recovery Agency, 318 F.3d 392,398(2d Cir.2003)(noting that district courts have the power to issue injunctions to prevent vexatious litigation). Moreover, the court acted within the range of permissible discretion in denying plaintiffs' motion for reconsideration, and we find this to be so even if we construe the filing as a motion for relief from judgment under Fed R.Civ.P.60(b). See Eisemann v.Greene, 204 F.3d 393,395n.2(2d Cir.2000)(per

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Employee Retirement Income Security Act ("ERISA"), see 29U.S.C.§ 1132(a)(2000). The statute of limitations for ERISA breach of fiduciary duty claims provides for a bar on any action brought more than "three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation" or six years after discovery in the case of fraud or concealment 29U.S.C.§ 1113(2)(2000); see Caputo v.Pfizer,Inc.,267 F.3d 181(2d Cir. 2001). Here, plaintiffs had actual knowledge of the alleged violation more than six years before they instituted their suit.

curiam)("To be entitled to reargument, a party must demonstrate that the Court overlooked controlling decisions or factual matters that were put before it on the the underlying motion.")(internal quotation marks omitted). Finally plaintiff Alice Clissuras's production and recusal motions are denied.

We have considered all of plaintiffs' claims with respect to defendants TRS, the Union, and the Fund and find them meritless. We therefore AFFIRM the judgment of the district court as it pertains to these defendants.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: /S/
Richard Alcantara, Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term,2003

(Argued:January 27,2004)

(Decided:February 3, 2004)

Docket Nos.03-7531;03-7532

ALICE CLISSURAS and PATRICIA CLISSURAS

Plaintiffs-Appellants,

- v.-

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND,

Defendants-Appellees,

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORE FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES,

Defendants

Before:KEARSE, CALABRESI,and KATZMANN, Circuit Judges.

Appeal from a district court's determination that a senior college of the City University of New York is an "arm of the state" and therefore immune from suit under the Eleventh Amendment of the U.S. Constitution. AFFIRMED.

ALICE CLISSURAS,pro se, Brooklyn,NY (Patricia Clissuras, pro se, Brooklyn,NY, on submission);

OREN ZEVE, Deputy Solicitor General, for Eliot Spitzer, Attorney General for the State of New York(Michael S. Belohlavek and Jean Lin, Assistant Solicitors General, on the brief), for Defendant-Appellee City University of New York;

BARRY I. LEVY,Shapiro, Beilly, Rosenberg, Aronowitz, Levy & Fox, LLP,New York,NY, for Defendant-Appellee Professional Staff Congress-CUNY;

NEIL D. LIPTON, Spivak,Lipton,Watanabe, Spivak,& Moss, LLP,New York,NY,for Defendant-Appellee PSC-CUNY Welfare Fund.

NORMAN CORENTHAL, Corporation Counsel of the City of New York, New York,NY(Michael A. Cardozo and Kristin M.Helmers, on the brief),for Defendant-Appellee Teachers' Retirement System of the City of New York.

PER CURIAM:

In October 2002, plaintiffs-appellants Alice Clissuras and Patricia Clissuras filed separate pro se actions, in United States District Court for the Southern District of New York, against the City University of New York ("CUNY"), the Teachers' Retirement System of the City of New York(TRS), Professional Staff Congress-("The Union"), PSC-CUNY Welfare-Fund("the Fund"), and various unnamed and potentially responsible defendants. Their virtually identical complaints alleged numerous violations ostensibly pursuant to 42U.S.C.§§1983 and 1985, and a variety of state law claims. The gravamen of the plaintiffs' action is that, following their respective retirements from the faculty

of CUNY's New York City College of Technology, they were denied certain pension and health benefits because of improper calculations and misclassifications by the defendants.

The district court (Scheindlin, J.) dismissed the claims against defendant CUNY at the outset of the litigation on the ground that it is "an arm of the state" and consequently entitled to Eleventh Amendment immunity. 1 U.S.Const. amend.XI. We agree with the district court that New York City College of Technology, plaintiffs' former employer and the relevant entity for the purposes of immunity analysis, is a "senior college" of the City University of New York. 2 See N.Y.Educ.Law §6202(5)

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1 The court below also dismissed the actions against the remaining named defendants pursuant to Fed.R.Civ.P.12 (b)(6), and enjoined the plaintiffs from instituting any future federal litigation against CUNY and these defendants without seeking leave of the court. We affirm this dismissal-pertinent to TRS, the Union, and the Fund-and the injunction in a separate order.

2 Under New York Law, CUNY is a separate corporate body. See N.Y.Educ.Law §6203 (McKinney 2001). CUNY is composed of "each senior college and each community college. "Id.§6202(2)(mcKinney Supp,2004). New York City Technical College does not appear to be a legally cognizable entity apart from CUNY. See id.§§6202(2)& 6205 (5). Consequently, CUNY is properly

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(McKinney Supp.2004)("The Term 'senior college' shall mean an institution of higher education in the city of New York. . .including. . . New York City college of technology (formerly known as 'New York city technical college')...."); Hester-Bay v. New York City Technical Coll, No.CV-98-5129 (CPS), 2000 U.S.Dist,LEXIS 5323,*(E.D.N.Y. March 24,2000).("Technical College is by statute a senior college of CUNY."). We are thus left with a question heretofore unanswered in this circuit: Is a CUNY senior college an "arm of the state" and therefore immune from suit? For the reasons that follow, we find that it is.

We review de novo a district court's dismissal on grounds of sovereign immunity. CSX Transp., Inc.v.N.Y.State Office of Real Prop.Servs.,306 F.3d 87, 94(2d Cir.2002). It is well settled that the ultimate guarantee" of the Eleventh Amendment is that "nonconsenting States may not be sued by private individuals in federal court." Bd. of Trustees v. Garrett, 531 U.S. 356,363(2001).3 And

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named defendant in this action. What is more, that we view New York City College of Technology, rather than CUNY's central administration, as the relevant institution is of no moment: The central administration is also a "senior college." Id.§6202(5)

3The two exceptions to this rule-congressional abrogation and state waiver-are not applicable here. Plaintiffs argue that CUNY "waived immunity by not answering and not making a motion." But

(Continued on the following page.)

the Eleventh Amendment extends immunity "not only to a state, but also to entities considered 'arms of the state.'" McGinty v. New York, 251 F.3d 84,95(2d Cir.2001). CUNY argues that it qualifies as an "arm of the state."

CUNY made the same argument before this Court four years ago, in a case involving a CUNY community college. See Pikulin v. CUNY, 176 F.3d 598,600(2d Cir. 1999)(per curiam) 4 In Pikulin, after

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CUNY did make a "suggestion" to the court, in the form of a letter, that jurisdiction over CUNY did not lie because of sovereign immunity. See Fed.R.Civ.P.12(b)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.") And although, as a general matter,we disapprove of district courts signing dismissal orders without giving plaintiffs an express opportunity to respond, in the instant case, we see no reason to remand this question, which we can readily decide on the submission and the law before us. See McGinty v. New York,251 F.3d84,90(2dCir.2001)(Since [the] issues are predominantly of a legal nature, we believe we are adequately informed to decide them.")

4 Pikulin "involved a contract between plaintiffs and the board of trustees of Kingsborough Community College, a CUNY community college, to install heating, ventilation, and air conditioning equipment." Hester-Bey, at 2000 U.S. Dist.LEXIS 5323, at *5.

reviewing the district court's conclusion that sovereign immunity attached, we sent the case back for reconsideration due to inadequate findings.5 Without deciding the ultimate question of CUNY's immunity. Pikulin set forth two facts that should guide the determination of whether an institution is an arm of the state: (1)"the extent to which the state would be responsible for satisfying any judgment that might be entered against the defendant entity," and (2)"the degree of supervision exercised by the state over the defendant entity." Pikulin, 176 F.3d at 600. The first of these is the "most salient factor in Eleventh Amendment determinations." Hess v. Port Auth. Trans-Hudson Corp.,513 U.S.30,48 (1994).

We find that CUNY senior colleges meet the two criteria outlined in Pikulin. First, the state is responsible for paying money judgments entered against CUNY senior colleges. See N.Y. Educ. Law §6224(6)(McKinney 2001)("[T]he comptroller of the state of New York is authorized to. . .pay from funding sources

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5 Specifically, we criticized the lower court's reliance on the state's statutory obligation to indemnify trustees, officers, and staff of CUNY against liability, "because, we reasoned, "this provision of state law requires the state to indemnify only such individuals affiliated with CUNY, and does not address the state's financial responsibility, if any, to satisfy judgments entered against CUNY itself." Pikulin, 176 F.3d at 600(citing N.y.Educ.Law§6205(1)

available for payment of claims by the state any settlement, order or judgment in any federal or state court, other than the court of claims, or any administrative tribunal which pertains to a senior college of the city university of New York.") (emphasis added); 6 see also id. §6224(5)(providing for state's payment of judgments entered against CUNY in state court of claims; Perry v. City of New York, 126A.D.2d714,511N.Y.S.2d310(2d Dept.1987)(holding that the state is responsible for paying money judgments against a senior CUNY college). The state also reimburses CUNY senior colleges for their net operating expenses. See N.Y. Educ.Law §6221(A)(4)(McKinney Supp.2004).

Second, "ultimate control over how CUNY is governed and operated" rests with the state. Becker v. City Univ. of New York, 94 F.Supp.2d 487,490(S.D.N.Y.2000). Among other things, the governor, with the advice and consent of the state senate appoints ten of the seventeen members of CUNY's board of trustees, including the chair and vice chair. See N.Y.Educ.Law §6204(2)(a) & (d)(McKinney 2001). And the chancellor is required by law to

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6 By contrast, claims against CUNY community colleges, such as the one at issue in Pikulin, are governed by Sections 50-e & 50-i of New York's General Municipal Law. See N.Y. Educ. Law §6224(1)(McKinney 2001). While these sections suggest that the City of New York is responsible for paying any judgment rendered against CUNY's community colleges, we need not determine that issue here.

submit an annual proposed budget, already approved by the board of trustees, to the governor, who in turn presents his budget recommendations for the senior colleges to the state legislature. Id.§6230 &(3).[7]

CUNY senior colleges certainly do have a degree of independence, but they are "ultimately accountable to, and dependent upon, the state." Becker,94 F. Supp. 2d at 490.[8] Therefore, we agree with all of the district courts in our circuit that have considered the issue that a CUNY senior college, here New York City College of Technology, is an "arm of the state." Plaintiffs' suit against CUNY are equivalent to suits against the State of New York and are therefore barred by the Eleventh Amendment.

We have considered all plaintiffs' challenges to the dismissal of CUNY for lack of jurisdiction on the grounds of sovereign immunity and find them to be meritless. Accordingly, we AFFIRM the judgment of the district court as it pertains to CUNY.

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7 Moreover, the real property of the CUNY senior colleges is owned by the state, see id. § 6219(1)(a), and CUNY may aquire property for use by senior colleges using the state's eminent domain power, see id § 6213(2).

8 Section 6201 states, in relevant part, that "[t]he legislature intends that the city university of New York should be maintained as an independent system of higher education. "Id. § 6201 (2). And Section 6201(1) preserves a

(Continued on the following page.)

role for the city. "The governance of the university must reflect increased state responsibility but should preserve the city's participation in the governance of the university it created and developed at city expense." But in light of all the other factors supporting state authority and control over CUNY and its senior colleges, a finding of sovereign immunity remains appropriate.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

Before: Hon. Amala L. Kearse,
Hon. Guido Calabresi,
Hon. Robert A. Katzmann,
Circuit Judges

Docket Nos. 03-7531;037532

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs-Appellants,

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND,
Defendants-Appellees.

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES.
Defendants.

Appeal from of the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

On consideration whereof, it is hereby ORDERED, ADJUDGED, and DECREED that the judgment of said district court be and it

hereby is AFFIRMED in accordance with the opinion of this Court.

FOR THE COURT:
Roseanne B. MacKechnie,
Clerk
By

/s/

Arthur M. Heller
Motions Staff Attorney

Filed February 3. 2004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE

Roseann B. Mackechnie
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse Foley Square in the City of New York, on the 14th day of May two thousand four.

ALICE CLISSARUS and PATRICIA CLISSARUS
Plaintiffs-appellants, (sic) 03-7531(L)

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CITY UNIVERSITY OF NEW YORK and PSC-CUNY WELFARE FUND,
Defendants-Appellee,

ALL CASUALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES ALL POTENTIALLY RESPONSIBLE AGENCIES and ALL CASUALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES. (sic)

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Appellants Patricia Clissarus and Alice Clissarus, (sic)

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to

any other judge that heard the appeal and that no such judge has requested that a vote be taken.

For the Court,

Roseann B. MacKechnie, Clerk

By: /s/

Arthur M. Heller
Motions Staff Attorney

(Filed May 14, 2004)

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 3rd day of February, two thousand and four.

Before: Hon. Amala L. Kearse,
Hon. Guido Calabresi,
Hon. Robert A. Katzmann,
Circuit Judges

Docket Nos. 03-7531, 03-7532

ALICE CLISSURAS and PATRICIA CLISSURAS
Plaintiffs-Appellants

v.

CITY UNIVERSITY OF NEW YORK, TEACHERS RETIREMENT SYSTEM OF THE CITY OF NEW YORK, PROFESSIONAL STAFF CONGRESS-CUNY, PSC-CUNY WELFARE FUND.
Defendants-Appellees

ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF AFORESAID FOUR AGENCIES, ALL POTENTIALLY RESPONSIBLE AGENCIES, ALL CAUSALLY RESPONSIBLE INDIVIDUALS OF SAID POTENTIALLY RESPONSIBLE AGENCIES.
Defendants

Appeal from of the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

On consideration whereof, it is hereby ORDERED, ADJUDGED, and DECREED that the

judgment of said district court be and it hereby is AFFIRMED in accordance with the opinion of this court.

FOR THE COURT:
Roseanne B. MacKechnie, Clerk

by /s/

Arthur M. Heller
Motions Staff Attorney

A TRUE COPY
Roseanne B. MacKechnie, Clerk

by /s/ Tammy Martinez

Deputy Clerk

ISSUED AS MANDATE: 6/14/04

SDNY/NYNY

02-cv-8130

SCHEINDLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- -X
:
ALICE CLISSURAS
:
Plaintiff,
:
- against -
:
CITY UNIVERSITY OF NEW YORK,
et al., :
Defendants.
- -X

SHIRA A. SCHEINDLIN, U.S.D.J.:

Pro se plaintiff Alice Clissuras has brought suit against, inter alia, the City of New York ("CUNY"). Because CUNY and the senior college in issue, New York City Technical, are arms of the state, CUNY is entitled to Eleventh Amendment immunity from suit. See Salerno v. City University of New York, No. 99 Civ. 11151, 2000 WL 1277324, at *3 (S.D.N.Y. Sept. 8, 2000); Becker v. City University of New York, 94 F. Supp. 2d 467, 491 (S.D.N.Y. 2000) ("In sum, the State of New York is responsible for paying judgments entered against CUNY senior colleges. The state has ultimate authority over how CUNY senior colleges are operated and governed. Accordingly, (plaintiff's) suit against CUNY's central administration is equivalent to a suit against the State of New York, and is thus barred by the Eleventh Amendment.")

Accordingly, defendant CUNY is dismissed from this lawsuit. The caption should be modified to reflect this dismissal.

SO ORDERED

/s/

SHIRA A. SCHEINDLIN
U.S.D.J.

Dated: New York, New York
October 31, 2002

- Appearances -

Plaintiff (Pro Se):

Alice Clissuras
215 Adams Street
Brooklyn, New York 11201

For Defendants:

Stephen M. Jacoby
Assistant Attorney General
120 Broadway
New York, New York 10271
(212) 416-8635

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

ALICE CLISSURAS and PATRICIA CLISSURAS,

Plainttiffs

- against -

TEACHERS" RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants.

- -X

SHIRA A. SCHEINDLIN, U.S.D.J.:

OPINION AND ORDER

02 Civ. 8130 (SAS)
02 Civ. 8138 (SAS)

I. INTRODUCTION

Alice Clissuras and Patricia Clissuras, 1 proceeding pro se, commenced this action on October 11, 2002 against the City University of New York ("CUNY"),

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1 Alice and Patricia Clissuras filed virtually identical Complaints and responses to the instant motion. The defendants filed separate motions with respect to each complaint. When necessary to indicate factual differences or to identify which plaintiff is referenced in the defendants, an "A." or "P." precedes the abbreviated document name. For example, the memorandum subtitled by the Professional Staff Congress relating to Patricia Clissuras is identified as "P." Union Mem."

2 the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress /City University of New York ("PSC-CUNY" or "the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Plaintiffs allege various constitutional violations

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2Defendant CUNY moved to dismiss the Complaints against it for lack of subject matter jurisdiction pursuant to Rule 12(h)(3). See 10/24/02 Letter to the Court from Stephen M. Jacoby, Assistant Attorney General, at 1. By Orders dated October 31, 2002, the Court dismissed the Complaints against CUNY. See 10/31/02 Order, No. 02 Civ. 8130 (SAS); 10/31/02 Order, No. 02 Civ. 8138 (SAS). The caption has been modified to reflect the dismissal.

Despite the dismissal of CUNY from these lawsuits, plaintiffs continue to argue that CUNY does not have immunity from suit under the Eleventh Amendment. See Memorandum of Law in Support of Plaintiff's Motion for Failure of Defendants' Answers and Defenses ("A. Mem." and "P. Mem.") at 9; see also Plaintiff's Rebuttal Reply to Defendants CUNY, Retirement System, Union, and Welfare Fund, for Continuing Failure to Respond to the Issues and Failure to Defend ("A. Sur-reply") (referring repeatedly to CUNY as a defendant). This argument is unavailing -- CUNY is no longer a party in this action because, as an arm of the state, CUNY (and the senior college in issue, New York City Technical College is entitled to Eleventh Amendment immunity from suit.

pursuant to section 1983 of Title 42 of the United States Code, as well as claims for breach of contract, fraudulent taking and obstruction of justice. The remaining defendants now move for dismissal pursuant to Rule 12(b)(6) 3 on the following grounds: (1) defendants are not state actors and therefore cannot be held liable under section 1983; (2) plaintiffs' claims are time barred; plaintiffs failed to state a claim for fraud, breach of contract, and breach of fiduciary duty; (4) no private right of action exists for obstruction of justice; (5) no private right of action exists for "identity theft;" and (6) the doctrines of collateral estoppel and res judicata bar plaintiffs' Claims. For the reasons stated below, defendants' motions are granted.

II. LEGAL STANDARD

A motion to dismiss pursuant to Rule 12(b)(6) should be granted only if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claims which would entitle [her] to relief.'" Weixel v. Board of Educ. of the City of New York, 287 F. 3d 138, 145 (2d Cir. 2002) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The task of the court in ruling on a Rule 12(b)(6) motion "'is merely to assess the legal feasibility of the complaint,

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3 The Fund also moved to dismiss plaintiffs' claim under Rule 12(b)(1). Because I am granting the motion to dismiss pursuant to Rule 12(b)(6). I need not address the jurisdictional issues raised by the Fund.

not to assay the weight of the evidence which might be offered in support thereof,'" Sims v. Artuz, 230 F. 3d 14, 20 (2d Cir. 2000) (quoting Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984).

Courts must accept all factual allegations in the complaint as true and draw all reasonable inferences in plaintiff's favor when deciding a motion to dismiss pursuant to Rule 12(b)(6). See Chambers v. Time Warner, Inc. 282 F.3d 147,152 (2d Cir. 2002). Because "most pro se plaintiffs lack familiarity with the formalities of pleading requirements, [courts] must construe pro se conplaints liberally, applying a more flexible standard to evaluate their sufficiency." Lerman v. Bd. of Elections in the City of New York, 232 F.3d 135, 140 (2d Cir.2000). It is particularly important to read a pro se complaint liberallly where it alleges civil rights violations. See Thompson v. Carter, 284 F.3d 411, 416 (2d Cir. 2001).

III. BACKGROUND

Both Alice and Patricia Clissuras worked as professors for New York City Technical College ("NYCTC"), a division of the City University of New York. Complaint of Alice Clissuras ("A. Compl.") ¶ 7; Complaint of Patricia Clissuras ("P. Compl.") ¶ 7. Alice Clissuras began teaching at NYCTC on September 1, 1948, A. Compl. ¶ 32, and she retired at the rank of Professor Emeritus with 34 years of service on September 1, 1982. A. Compl. ¶ 7. On February 1, 1969, Patricia Clissuras began teaching at NYCTC. P. Compl. ¶ 20. She retired at the rank of Professor Emeritus on January 30, 1986. P. Compl. ¶ 20. Patricia Clissuras

accumulated twenty-three years of service by teaching at NYCTC for seventeen years, purchasing three years of service credit, and acquiring three additional years of service credit by selecting early retirement. P. Compl. ¶ 20.

Plaintiffs describe a scheme in which the defendants failed to credit them with all their years of service, thereby affecting their pension calculations and reducing their pension payments. Specifically, Alice Clissuras claims defendants TRS and the Union treated her first five years of service as "outside service" and excluded them from the pension calculation. A. Compl. ¶ 21. By eliminating five years of outside service, TRS determined that Alice Clissuras failed to qualify for the 30-year service allowance and calculated her pension benefits based on twenty-nine years of service. A. Compl. ¶¶ 20-21. Alice Clissuras claims she lost more than $10,000.00 annually for twenty years, resulting in over $200,000.00 in damages. A.Compl. ¶ 24. Patricia Clissuras claimed defendant TRS failed to credit her for a complete year of service in 1969, and failed to include six years of service credit obtained through purchase and early retirement. P. Compl. ¶ 21. She alleges damages of over $192,000.00. P. Compl. ¶ 26. Plaintiffs claim the Union similarly used these incorrect calculations to their detriment. A.Compl. ¶¶ 30-33; P. Compl. ¶¶ 32-34.

Both plaintiffs accuse defendants TRS, Welfare Fund and the Union of improperly considering them to be New York City public school teachers, rather than professors for the State of New York,

when calculating benefits. A. Compl. ¶¶ 30, 33, 44-47; P. Compl. ¶¶ 34, 48051. In addition, plaintiffs allege the defendants breached a contract and the Fund breached its fiduciary duty under ERISA by failing to treat them as state retirees and providing reduced health insurance coverage. A. Compl. ¶¶ 41-50; P. Compl. ¶¶ 45-53. Plaintiffs further claim defendants' categorization of them as city retirees constitutes obstruction of justice and "identity theft." A. Compl. ¶¶ 58-61; P. Compl. ¶¶ 63-66.

As noted, the remaining defendants now move to dismiss these actions. Defendant PSC-CUNY has also requested monetary sanctions against the plaintiffs. See Memorandum of Law on Behalf of PSC CUNY in Further Support of Its Motion to Dismiss and Request for Sanctions Against Plaintiff ("Union Rep.") at 8-10.

IV. DISUSSION

A. Federal Claims

1. Section 1983 Claims

Plaintiffs essentially claim that defendants violated their civil rights and denied them due process and equal protection under the law by taking their property (via the pension plan and health benefits) and their identities. Plaintiffs further allege that defendants conspired to perpetrate these violations, thereby obstructing justice. These claims fall within the ambit of section 1983. [4]

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[4] Defendant TRS characterized plaintiffs'

(Continued on the following page.)

a. State Action

Section 1983 establishes liability for the deprivation of constitutional rights by anyone acting "under color of any statute, ordinance, regulations, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983 (2000). "[T]he under-color-of-state-law element of § 1983 excludes from its reach 'merely private conduct, no matter how discriminatory or wrongful.'" American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999) (quoting Blum v. Yaretsky, 991, 1002 (1982). The Union And Fund argue that plaintiffs' constitutional claims are barred because their complaints fail to demonstrate that they are state actors or acted under color of state law.

State action is properly determined by considering whether "the alleged infringement of federal rights [is] fairly attributable to the St[illegible]" Rendell-Baker v. Kohn, 457 U.[illegible]0, 838 (1982) (quotation marks and citation omitted). Courts require the defendant to " 'have exercised power possessed by virtue of state law and

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claims that the defendants conspired to reduced their benefits as a claim brought pursuant to section 1985(3) of Title 42 of the United States Code. See Defendant TRS' Memorandum of Law ("TRS Mem.") at 4. Even if plaintiffs' conspiracy claim falls within section 1985(3). plaintiffs must first establish that defendants are state actors. Thus, for the reasons discussed below, any claim under section 1985(3) must also be dismissed.

made possible only because the wrongdoer is clothed with the authority of state law' " to support a state action finding. Kia P. v. McIntyre, 235 F. 3d 749, 755 (2d Cir. 2000) (quoting West v. Atkins, 487 U.S. 42, 49 (1988). Even receiving "information and assistance from federal authorities does not render the recipient's subsequent, independently rendered decision using such information 'fairly attributable' to the government." United States v. International Bhd. of Teamsters, 156 F.3d. 354, 360 (2d Cir. 1988) (emphasis in original.

Plaintiffs contend that the Union and Fund acted under color of state law because they bear the name of CUNY and "serve only CUNY, a State entity, and the CUNY teaching staff." A Mem. at 6-7; P. Mem. at 6-7. 5 Using "CUNY" in their official titles hardly establishes nexus to attribute the alleged unlawful conduct to the state; plaintiffs must instead allege that "defendants' actions took place under the direction or control of a state entity." Andujar." v. Hewitt, No. 02 Civ. 2223, 2002 WL 1792065, at *10 (S.D.N.Y. Aug. 2, 2002). Plaintiffs fail to assert that CUNY controlled the decisions of the Union and the Fund, precluding a finding of state action.

Plaintiffs next declare that the

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5 Plaintiffs filed a "Motion for Failure of Defendants' Answers and Defenses" in response to the Defendants' Motion to Dismiss. No such motion is found in the Federal Rules of Civil Procedure.

Union acted under color of state law by signing a collective bargaining agreement ("CBA") with CUNY and using a CUNY form and method of calculation to determine pension benefits. See affirmation [of Alice Clissuras] in support of Plaintiff's Motion for Dismissal for Failure of Defendants' Answers and Defenses ("A. Aff.") at 6; P. Aff. at 6. The Union's CBA with the State cannot alone establish state action. See Dunn v. County of Erie, no. 92 Civ. 511, 1993 WL 427455, at *3 (W.D.N.Y. Oct. 14, 1993). As correctly noted the Union, labor unions generally are not considered state actors. See Ciambriello v. County of Nassau, 292 F. 3d 307, 323 (2d Cir. 2002). Plaintiffs failed to allege any control or direction over the Union by the state sufficient to support a finding of state action.

Additionally, plaintiffs proclaim the Fund a state actor because it "administers government money for health benefits under the aegis of State government." A. Mem. at 7; P. Mem. at 7. Receipt of public funds or information from state authorities will not convert a private actor into a state actor. See International Bhd. of Teamsters, 156 F. 3d at 360; accord Andujar, 2002 WL 1792065, at *9 ("Neither government funding nor regulation, however extensive, is sufficient to confer section 1983 liability on private actors."). However, performing a function " 'traditionally [within] the exclusive prerogative of the State'" constitutes state action. Rendell-Baker, 457 U.S. at 842 (quoting Jackson v. Metro. Edison Co., 419 U.S. 345 (1974). Private companies frequently administer health benefits and insurance plans.

Providing health insurance (even if funded by the government) does not transform the Fund into a state actor.

b. Statute of Limitations

Defendant TRS argues that plaintiffs' constitutional claims against it are time-barred. Actions pursuant to section 1983 are governed by the personal injury statute of limitations in the state where the action is brought. See Owens v. Okure, 488 U.S. 235, 240-41 (1989). In New York, the personal injury statute of limitations is three years. See N.Y. C.P.L.R. § 214(5) (McKinney 2002). Section 1983 claims accrue when the claimant " 'knows or has reason to know of the allegedly impermissable conduct and the resulting harm.' " Pena v. Travis, No. 01 Civ. 8534, 2002 WL 31886175, at *11 (S.D.N.Y. Dec. 27, 2002) (quoting Duamutef v. Morris, 956 F. Supp. 1112, 1119 (S.D. N.Y. 1997).

Plaintiffs filed their Complaints on October 11, 2002. Accordingly, any claim accruing before October 10, 1999 is time-barred. Alice Clissuras received her first retirement check from TRS on January 2, 1983, see Defendant TRS' Memorandum of Law (A. "TRS Mem.") at 5, and Patricia Clissuras received her first retirement payment on may 2, 1986. See P. Mem. at 5. Plaintiffs may not have immediately realized that the pension calculations were incorrect. However, Alice Clissuras had reason to know of her alleged injury by August 1985, when she commenced federal and state actions regarding the pension calculation. 6 See A. TRS Mem.

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6 In August 1985, Alice Clissuras filed

(Continued on the following page.)

at 3, 5. By June 1986, when Patricia Clissuras instituted federal and state

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an action in federal court against TRS, CUNY, NYCTC, PSC/CUNY, and other defendants claiming violations of Title VII of the Civil Rights Act (sex, religious discrimination resulting in reduced pension benefits) and various state law claims. Judge Jack Weinstein dismissed plaintiff's federal claim as time-barred, ruled no constitutional violation existed, and declined to exercise supplemental jurisdiction over the state law claims in an unpublished decision. See Clissuras v. City of New York, et al., No. 85 CV 3180 (E.D.N.Y. Dec. 12, 1985), aff'd, 1986 U.S. App. LEXIS 28685 (2d Cir. Mar. 31, 1986) (unpublished decision). Plaintiff's petition for certiorari was denied by the Supreme Court. See Clissuras v. City of New York, et al., cert. denied, 479 U.S. 933 (1986), reh'g denied, 479 U.S. 1047 (1987).

In plaintiff's state court action against TRS, CUNY, PSC/CUNY, and other defendants for an accounting of pension payments and for breach of contract, the Appellate Division of the Supreme Court of New York affirmed the Supreme Court's dismissal based on plaintiff's failure to bring suit before four-month statute of limitations ran. See Clissuras v. City of New York, et al., 517 N.Y. S. 2d 39 (2d Dep't 1987) (Discussing the four-month statute of limitations applicable to public agency defendants under New York C.P.L.R. § 217), appeal dismissed, 70 N.Y. 2d 795 (1987), cert. denied, 484 U.S. 1053 (1988).

lawsuits concerning her benefits, she knew of her injuries. 7 See P. TRS Mem at 5. Accordingly, plaintiffs' claims against TRS accrued well beyond the three-year limitations period and are time-barred.

i. Continuing Violations

Plaintiffs assert that continued receipt of their pension checks

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7 In federal court, Patricia Clissuras filed an action against TRS, CUNY, PSC/CUNY, and other defendants alleging the defendants discriminated against her because of her sex and religion in performing her pension benefits calculations, as well as violations of sections 1981, 1983, 1985(3) and 1986 of Title 42 of the United States Code. See Clissuras v. EEOC, at al., No. 89 CV 5869, 1990 U.S. Dist. LEXIS 8284 (S.D.N.Y. June 29, 1990). Plaintiff's claims were dismissed on the basis of res judicata, Eleventh Amendment immunity, and failure to state a claim. See id.

Patricia Clissuras brought suit in state court claiming her pension was calculated at a lower rate than that of her colleagues due to her sex and religion. Plaintiff appealed the New York State Division of Human Rights' probable cause determination finding no discrimination, which the Appellate Division of the Supreme Court of New York affirmed. See Clissuras v. New York State Division of Human Rts., et al., 536 N.Y.S. 2d 625 (1st Dep't 1988), appeal dismissed, 74 N.Y. 2d 715 (1989).

estabishes a continuing violation, making their claims against TRS timely. See A. Mem. at 9; P. Mem. at 9. The continuing violation doctrine "allows courts to consider conduct that would ordinarily be time barred as long as the untimely incidents represent an ongoing unlawful employment practice." National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 108 (2002). Plaintiffs must allege more than a continuing impact on their benefits to establish a continuing violation -- there must be a present violation. See United States v. Evans, 431 U.S. 533, 558 (1977). The Supreme Court has held "[i]t is not correct to consider payments of benefits based on a retirement that has already occurred as a sort of continuing violation." Florida v. Long, 487 U.S. 223, 239 (1988). 8 Because plaintiffs cannot evade the statute of limitations by alleging a continuing violation, their

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8 The LONG Court distinguished its decision from Bazemore v. Friday, 478 U.S. 385 (1986), which addressed the continuing payment of discriminating wages for work performed by current employees. Long concerned retirees pension benefits "fixed under a contract between the employer and retiree based on a past assessment of an employee's expected years of service, date of retirement, average final salary, and years of projected benefits." Long 487 U.S. at 239. In distinguishing pension plans from employment discrimination cases, the Court emphasized that applying the continuing violation doctrine to pension

(Continued on following page.)

section 1983 claims against TRS are dismissed.

2. ERISA

The Fund contends it qualifies as a "governmental plan" exempt from the purview of the Employee Retirement Income Security Act ("REISA"), see 29 U.S.C. § 1003(b)(1); accordingly plaintiffs' claims concerning employee benefits must instead be asserted as common law breach of fiduciary duty action. A governmental plan is a plan "established or maintained for its employees . . . by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the forgoing." 29 U.S.C. § 1002(32) (2000). The Fund, which provides benefits to the public employees of the City University of New York, qualifies as a governmental plan. See Roy v. Teachers Ins. & Annuity Assoc., 878 F. 2d 47, 48-49 (2d Cir. 1989) (holding voluntary retirement program for State University of New York employees was governmental plan exempt from ERISA); see also Feinstein v. Lewis, 477 F. Supp. 1256, 1262 (S.D.N.Y. 1979) (finding welfare plans established pursuant to a collective bargaining agreement for the benefit of public employees are governmental plans). Because the Fund

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funds would potentially hold employers liable for all prior conduct "that could not reasonably have been considered violative of Title VII at the time retirements occurred and funding provisions were made." Id. at 240.

is a governmental plan, plaintiffs' ERISA claims against it must be dismissed.

B. STATE CLAIMS

A district court may decline to exercise supplemental jurisdiction over state law claims if ["it] has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3) (2000). Because plaintiffs' federal claims have been dismissed, I decline to exercise supplemental jurisdiction over plaintiffs' claims of common law fraud, breach of contract and breach of fiduciary duty. Accordingly, plaintiffs' state law claims are, dismissed without prejudice.

c. Sanction

Defendant PSC-CUNY requests monetary sanctions against plaintiffs for their "vexatious" and "frivolous litigation." Memorandum of Law on Behalf of PSC CUNY in Further Support of its Motion to Dismiss and Request for Sanctions Against Plaintiff [Alice Clissuras]("A.Union Rep.") at 8-10; P. Union Rep. at 8-10. The Union cites Golub v. University of Chicago, Nos. 87 Civ. 2891, 88 Civ. 597, 1992 WL 333641, at *3 (E.D.N.Y. Oct. 26, 1992), to support its request for monetary sanctions against these pro se plaintiffs. However, the court in Golub imposed monetary sanctions only after Golub beleaguered various courts with duplicative motions and actions, ignored the court's instruction "not" to replead any claims dismissed with prejudice," and disobeyed a court order permanently enjoining him from filing or bringing any other actions against the defendants in any court or administrative agency. See id. at *1, *3. The court

went so far as to warn Golub that he "may not re-open this case, now or ever." Id. at *3 (emphasis in original). In justifying monetary sanctions, the court emphasized that Golub had been "adequately warned of the consequences which may result from this behavior." Id.

Alice and Patricia Clissuras have not received the same unambiquous warnings, making monetary sanctions inappropriate at this time. However, such a warning will now issue. Alice Clissuras and Patricia Clissuras are hereby permanently restrained and enjoined from filing, bringing or otherwise instigating any actions, or prosecuting or continuing to prosecute any claims, motions or other filings of any type in any federal court against the City University of New York, the Teachers' Retirement System of the City of New York, Professional Staff Congress/City University of New York, and PSC-CUNY Welfare Fund unless they first seek leave to proceed from this court. In seeking leave, plaintiffs must submit to a magistrate judge a copy of this Court's Opinion and Order and a sworn statement certifying that the claims to be asserted have not been previously adjudicated. Should either plaintiff fail to comply with these conditions, monetary sanctions may be appropriate.

V. CONCLUSION

For the reasons stated above, defendants' motions to dismiss the complaints are granted. The Clerk of the Court is directed to close these cases.

SO ORDERED:

/S/

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
March 27, 2003

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs,

-against-

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/ CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants

----------X

Doc #24 **02 CIVIL 8130 (SAS)** ← File in
02 CIVIL 8138 (SAS)

The remaining defendants having moved to dismiss pursuant to Fed. R. Civ. P. 12 (b)(6), and the matter having come before the Honorable Shira A. Scheindlin, United States District Judge, and the Court, on March 31,2003, having rendered its Opinion(88259)and Order granting defendants' motions to dismiss the complaints, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (88259) and Order dated March 31, 2003, defendants' motions to dismiss the complaints are granted; accordingly, these cases are closed.

Dated: New York, New York
March 31, 2003

J. MICHAEL McMAHON

BY: **Clerk of Court**
/S/
Deputy Clerk

Filed 3/31/03

Entered on doc/microfilm 4/4/03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ALICE CLISSURAS and PATRICIA CLISSURAS,
Plaintiffs,

-against-

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/ CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al.,

Defendants

----------X

Doc #23 **02 CIVIL 8130 (SAS)**
02 CIVIL 8138 (SAS) ← File in

The remaining defendants having moved to dismiss pursuant to Fed. R. Civ. P. 12 (b)(6), and the matter having come before the Honorable Shira A. Scheindlin, United States District Judge, and the Court, on March 31,2003, having rendered its Opinion(88259)and Order granting defendants' motions to dismiss the complaints, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion (88259) and Order dated March 31, 2003, defendants' motions to dismiss the complaints are granted; accordingly, these cases are closed.

Dated: New York, New York
March 31, 2003

J. MICHAEL McMAHON

BY: **Clerk of Court**
/S/
Deputy Clerk

Filed 3/31/03

Entered on doc/microfilm 4/4/03

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

ALICE CLISSURAS and PATRICIA CLISSURAS :

Plaintiffs, :

-against- :

TEACHERS' RETIREMENT SYSTEM OF NEW YORK, PROFESSIONAL STAFF CONGRESS/CITY UNIVERSITY OF NEW YORK, PSC-CUNY WELFARE FUND, et al., :

Defendants. :

- -X

SHIRA A. SCHEINDLIN, U.S.D.J.

MEMORANDUM
OPINION AND ORDER

02 Civ. 8130 (SAS)
02 Civ. 8138)SAS)

Plaintiffs have filed untimely motions for reconsideration of this Court's Opinion and Order in Clissuras v. Teachers' Retirement Sys. of New York, Nos. 02 Civ. 8130 and 02 Civ. 8138, 2003 WL 1701992 (S.D.N.Y. Mar. 28, 2003), dismissing their claims against all defendants. For the reasons set forth below, plaintiffs' motions for reconsideration are denied.

I. BACKGROUND

Alice Clissuras and Patricia Clissuras, proceeding pro se, commenced this action on October 11, 2002 against the City University of New York ("CUNY"),1

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1 Defendant CUNY moved to dismiss the Complaints against it for lack of subject matter jurisdiction pursuant to Rule

(Continued on following page.)

the Teachers' Retirement System of the City of New York ("TRS"), Professional Staff Congress/City University of New York ("PSC-CUNY" or "the Union"), PSC-CUNY Welfare Fund ("the Fund"), and various unnamed and potentially responsible defendants. Plaintiffs alleged various constitutional violations pursuant to section 1983 of Title 42 of the United States Code, as well as claims for breach of contract, fraudulent taking and obstruction of justice.

Both Alice and Patricia Clissuras worked as professors for New York City Technical College ("NYCTC"), a division of the City University of New York. Plaintiffs described a scheme in which the defendants failed to credit them with all their years of service, thereby affecting their pension calculations and reducing their pension payments. In addition, plaintiffs accused defendants TRS, Welfare Fund and the Union of improperly considering them to be New York City public school teachers, rather than professors for the State of New York, when calculating benefits. Plaintiffs further claimed that defendants' categorization of them as city retirees constitutes obstruction of justice and "identity theft."

II. LEGAL STANDARD

A motion for reconsideration is governed by Local Rule 6.3 and is appropriate where a court overlooks "controlling" decisions or factual

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12(h)(3). By Orders dated October 31, 2003, the Court dismissed the Complaints against CUNY.

matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." Range Road Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 392 (S.D.N.Y. 2000)(internal quotation marks and citation omitted); see also Shrader v. CSX Transp., Inc.,70 F. 3d 255, 257 (2d Cir. 1995)("The standard for granting . . . a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court"). Alternatively, a motion for reconsideration may be granted to "correct" a clear error or prevent manifest injustice." Doe v. New York City Dep't of Soc. Servs., 709 F. 2d 782, 789 (2d Cir. 1983). There is a ten-day time limit for bringing motions for reconsideration. See S.D.N.Y. R. 6.3 (requiring that a motion for reconsideration or reargument be served within ten days after the docketing of the court's determination of the original motion.

Local Rule 6.3 should be "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the court." Dellefave v. Access Temps., Inc., No. 99 Civ. 6098, 2001 WL 286771, at *1 (S.D.N.Y. Mar. 22, 2001); see also In re Houbigant, Inc., 914 F. Supp. 997, 1001 (S.D.N.Y. 1996) (a Local Rule 6.3 motion "is not a motion to reargue those issues already considered when a party does not

like the way the original motion was resolved"); Carolco Pictures, Inc. v. Sirota, 700 F. Supp. 169, 170 (S.D.N.Y. 1988) (purpose of Local Rule 6.3 is to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters").

III. DISCUSSION

Plaintiffs seek to reargue issues that were already carefully considered by this Court in March 2003. These motions are untimely as the Opinion and Order and Judgment dismissing plaintiffs' Complaints were docketed on March 28 and 31, 2003, respectively. Accordingly, plaintiffs motions could be denied on this basis alone. However, considering plaintiffs' pro se status, I will consider the merits of plaintiffs motion despite the late date on which they were filed.

Plaintiffs' motions do not raise any issues of fact or law overlooked by this Court. Nor do plaintiffs argue that reconsideration is necessary here to prevent manifest injustice. To the contrary, justice requires that plaintiffs not be permitted to reargue issues that were fully considered by this Court. Because there is absolutely no basis for plaintiffs' untimely motions, they are hereby denied.

IV. CONCLUSION

For the reasons set forth above, plaintiffs' motions for reconsideration are denied. The Clerk of the Court is

directed to close these motions.

SO ORDERED:

/S/

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
May 15, 2003

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